

PATENT COOPERATION TREATY

Translation

From the
INTERNATIONAL SEARCHING AUTHORITY

PCT

WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY

(PCT Rule 43bis.1)

To:

Date of mailing (day/month/year) **See form PCT/ISA/210**

Applicant's or agent's file reference

PCT 2119

FOR FURTHER ACTION

See paragraph 2 below

International application No.

PCT/EP2004/009463

International filing date (day/month/year)

25.08.2004

Priority date (day/month/year)

04.09.2003

International Patent Classification (IPC) or both national classification and IPC

E04F13/08, E04F13/14, E06B3/54

Applicant

FISCHERWERKE, ARTUR FISCHER GMBH & CO. KG

1. This opinion contains indications relating to the following items:

- ☒ Box No. I Basis of the opinion
- ☒ Box No. II Priority
- ☐ Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- ☐ Box No. IV Lack of unity of invention
- ☒ Box No. V Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- ☐ Box No. VI Certain documents cited
- ☐ Box No. VII Certain defects in the international application
- ☐ Box No. VIII Certain observations on the international application

2. **FURTHER ACTION**

If a demand for international preliminary examination is made, this opinion will be considered to be a written opinion of the International Preliminary Examining Authority ("IPEA") except that this does not apply where the applicant chooses an Authority other than this one to be the IPEA and the chosen IPEA has notified the International Bureau under Rule 66.1bis(b) that written opinions of this International Searching Authority will not be so considered.

If this opinion is, as provided above, considered to be a written opinion of the IPEA, the applicant is invited to submit to the IPEA a written reply together, where appropriate, with amendments, before the expiration of 3 months from the date of mailing of Form PCT/ISA/220 or before the expiration of 22 months from the priority date, whichever expires later.

For further options, see Form PCT/ISA/220.

3. For further details, see notes to Form PCT/ISA/220.

Name and mailing address of the ISA/EP

Authorized officer

Facsimile No.

Telephone No.

WRITTEN OPINION OF THE
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International application No.

PCT/EP2004/009463

Box No. I Basis of this opinion

1. With regard to the language, this opinion has been established on the basis of the international application in the language in which it was filed, unless otherwise indicated under this item.

☐ This opinion has been established on the basis of a translation from the original language into the following language
_____, which is the language of a translation furnished for the purposes of international search (under Rule 12.3 and 23.1(b)).

2. With regard to any nucleotide and/or amino acid sequence disclosed in the international application and necessary to the claimed invention, this opinion has been established on the basis of:

a. type of material

- ☐ a sequence listing
☐ table(s) related to the sequence listing

b. format of material

- ☐ in written format
☐ in computer readable form

c. time of filing/furnishing

- ☐ contained in the international application as filed.
☐ filed together with the international application in computer readable form.
☐ furnished subsequently to this Authority for the purposes of search.

3. ☐ In addition, in the case that more than one version or copy of a sequence listing and/or table(s) relating thereto has been filed or furnished, the required statements that the information in the subsequent or additional copies is identical to that in the application as filed or does not go beyond the application as filed, as appropriate, were furnished.

4. Additional comments:

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Box No. II

Priority

1. ☒ The following document has not yet been furnished:

☒ copy of the earlier application whose priority has been claimed (Rule 43bis.1 and 66.7(a)).

☐ translation of the earlier application whose priority has been claimed (Rule 43bis.1 and 66.7(b)).

Consequently it has not been possible to consider the validity of the priority claim. This opinion has nevertheless been established on the assumption that the relevant date in the claimed priority date.

2. ☐ This opinion has been established as if no priority had been claimed due to the fact that the priority claim has been found invalid (Rules 43bis.1 and 64.1). Thus for the purposes of this opinion, the international filing date indicated above is considered to be the relevant date.

3. Additional observations, if necessary:

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Box No. V	Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement		
1	Statement		
	Novelty (N)	Claims <u>3</u>	YES
		Claims <u>1, 2</u>	NO
	Inventive step (IS)	Claims <u>1-3</u>	YES
		Claims <u>1-3</u>	NO
	Industrial applicability (IA)	Claims <u>1-3</u>	YES
		Claims <u></u>	NO
2	Citations and explanations:		
1	<p>This opinion makes reference to the following documents:</p> <p>D1: US-A-4793112</p> <p>D2: US-A-5787662</p>		
2.	<p>The application does not meet the requirements of PCT Article 6 because claim 1 is not clear.</p> <p>Some of the features in device claim 1 relate to a method of using the device and not to the definition of the device in terms of its technical features. Contrary to PCT Article 6, the intended limitations are therefore not clearly apparent from the claim.</p> <p>Claim 1 concerns a fastening means for producing an anchorage in an undercut borehole in a panel. The fastening device must also be capable of being anchored by means of a curable compound, because the anchorage is directly connected with the use of the device.</p>		
3.1	<p>Notwithstanding the aforementioned lack of clarity,</p>		

Box No. V

Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability;
citations and explanations supporting such statement

the subject matter of claim 1 is otherwise not novel within the meaning of PCT Article 33(2), with the result that the requirements of PCT Article 33(1) are not met.

Document D1 discloses (cf. figure 1) a fastening device (8) for producing an anchorage in an undercut borehole (5, 6), comprising a tie bolt (8) which comprises fastening means and an anchoring section with a cross-sectional enlargement (9) in the direction of insertion, the tie bolt being provided in the region of the anchoring section with a sheath (7) consisting of an elastic polymer.

Consequently, the fastening device known from D1 possesses all the features listed in claim 1 and would furthermore also be capable of being anchored by means of a curable compound (cf. PCT/GL/ISPE 5.20). The novelty of claim 1 is therefore anticipated, PCT Article 33(2).

- 3.2 It should additionally be noted that if the scope of protection of claim 1 includes the curable compound, i.e. **"has been anchored"** instead of "is anchored", such a claim is otherwise not novel within the meaning of PCT Article 33(2), with the result that the requirements of PCT Article 33(1) are not met.

Document D2 discloses (cf. figure 4) a fastening device for producing an anchorage in an undercut borehole, comprising a tie bolt which comprises fastening means and an anchoring section with a

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Box No. V	Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
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cross-sectional enlargement (18) in the direction of insertion, the tie bolt being provided in the region of the anchoring section with a sheath (28) consisting of an elastic polymer, in which arrangement the tie bolt **has been anchored** by means of a curable compound (24).

4. Claims 2, 3 do not contain any features which, in combination with the features of any claim to which they refer, meet the PCT requirements for novelty (claim 2) and inventive step (claim 3).
5. The subject matter of claims 1-3 is deemed to be industrially applicable, thereby meeting the requirements of PCT Article 33(4).